No. 7

# In the Supreme Court of the United States

OCTOBER TERM, 1950

NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC., ET AL., PETITIONERS

v.

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS

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## CITATIONS





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## BRIEF FOR RESPONDENTS

### OPINIONS BELOW

The opinion of the District Court for the District of Columbia (R. 17–19) is not reported. The *per curiam* order of the Court of Appeals for the District of Columbia Circuit, affirming on the authority of *Joint Anti-Fascist Refugee Committee* v. *Clark*, 177 F. 2d 79 (C. A. D. C.), was entered without opinion (R. 20).

### JURISDICTION

The judgment of the Court of Appeals was entered on October 25, 1949 (R. 20). The peti-

tion for a writ of certiorari was filed on January 23, 1950, and was granted on May 15, 1950 (R. 23). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

## QUESTION PRESENTED

Whether petitioners have any legal standing or right to challenge a designation, made by the Attorney General pursuant to instructions issued by the President under Executive Order 9835, that petitioner National Council of American-Soviet Friendship, Inc., is a Communist organization.

## STATUTE AND EXECUTIVE ORDER INVOLVED

Section 9A of the Hatch Act, 53 Stat. 1148, 5 U. S. C., Supp. II, 118j, and Executive Order 9835, 12 F. R. 1935, are set forth in the Appendix to the Brief for Respondents in *Bailey* v. *Richardson,* No. 49, this Term.

## STATEMENT

This case was brought to challenge the designation by the Attorney General, for the purposes of the Federal government's loyalty program, of petitioner National Council of American-Soviet Friendship, Inc. as a Communist organization. The designation of organizations and the publication thereof pursuant to statute and executive order are fully described at pp. 14–24, of the Brief for Respondents in *Bailey* v. *Richardson,* No. 49, this Term, and pp. 3–4, of the Brief for

Respondents in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, No. 8, this Term.

Petitioners herein, the National Council of American-Soviet Friendship, Inc., the Denver Council of American-Soviet Friendship, and six officers thereof (R. 4–5), allege that they have suffered irreparable injuries as a result of the above described designation and that the actions of respondents "have violated the rights of the plaintiffs guaranteed by the First and Fifth Amendments to the Constitution and are contrary to the Ninth and Tenth Amendments" (R. 13, 16).[1] Specifically, the injuries alleged are these: The National Council and Denver Council, whose avowed purpose is to disseminate educational material concerning the Union of Soviet Socialist Republics in order to strengthen friendly relations between the United States and the Soviet Union (R. 4, 9), have lost members, officers, sponsors, contributions, attendance at meetings, circulation of their publications, acceptance of their exhibits and other materials by educational institutions, have been denied meeting places and radio time, and have been unable to gain the support of federal employees (R. 13–14). It is further claimed that the National

[1] It is also alleged that the Attorney General's designation was made without the "appropriate investigation and determination" required by Part III, Section 3 of the Executive Order (R. 11–12), and that the National Council does not fall within the subversive categories of the Executive Order (R. 10).

Council has been deprived of its status as a tax exempt organization by the Treasury Department (R. 14) and that the personal and professional reputations of the individual petitioners have been damaged and their opportunities for public and private employment impaired (R. 13–15).

This action was brought on June 29, 1948, to enjoin respondents, the Attorney General and the Chairman and members of the Loyalty Review Board of the Civil Service Commission, from designating and publicizing the name of the National Council, or its affiliates, as a Communist organization, to direct respondents to remove the National Council's name from the list of designated Communist organizations, to make a public statement of this removal, and to take no action based on the inclusion of the National Council's name in the list of designated Communist organizations. Petitioners further prayed for a declaratory judgment that Part III, Section 3, and Part V, Section 2, of Executive Order 9835 are unconstitutional (R. 16).

Respondents moved to dismiss the complaint for want of a justiciable controversy between the parties and for failure to state a claim upon which relief can be granted (R. 17). Following a hearing, the District Court, on February 1, 1949, dismissed the complaint (R. 19). The Court of Appeals affirmed *per curiam* (R. 20).

## ARGUMENT

The instant case, decided on the authority of *Joint Anti-Fascist Refugee Committee* v. *Clark*, 177 F. 2d 79 (C. A. D. C.), presents the same issues raised by petitioner in that case and advances the same major arguments. No. 8, this Term, *sub nom. Joint Anti-Fascist Refugee Committee* v. *McGrath*. The Brief for Respondents in the *Joint Anti-Fascist* case develops the reasons and authorities which, we submit, establish the correctness of the decision below. In addition, the Brief for Respondents in *Bailey* v. *Richardson*, No. 49, this Term, demonstrates the occasion for, and the validity of, Executive Order 9835. Accordingly, we need here advert only to the narrow contention that the individual petitioners herein have standing to sue as persons with a vaguely defined "reasonable expectancy" of future Government employment (R. 15, 16) made *prima facie* ineligible for such employment by reason of their relationship with the National Council (Br. for Pet. 22). We think it clear that they do not have such standing. Cf. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 86–91.[2]

[2] It should be noted that petititoners' reliance on *Waite* v. *Macy*, 246 U. S. 606, is misplaced. Petitioners state that "the tea importer in *Waite* v. *Macy*, *supra*, * * * was able to challenge a rule which would have excluded his tea without waiting to have it actually excluded." (Br. for Pet. 22.) To the contrary, the collector at the port of entry had already excluded the complainant's tea in accordance with a regulation promulgated by the Tea Board; suit was brought to re-

## CONCLUSION

For the reasons set forth above and in the Briefs for Respondents in the *Joint Anti-Fascist* and *Bailey* cases (Nos. 8 and 49, this Term), it is respectfully submitted that the judgment of the court below should be affirmed.

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strain the Tea Board from applying its regulation to complainant's tea in an appeal taken to the Tea Board from the collector's action. See *Macy* v. *Brown*, 215 Fed. 456 (S. D. N. Y.) and 224 Fed. 359 (C. A. 2). Thus, complainant's position was similar to that of the petitioner (Poole) in the *United Public Workers* case who was held to have standing to sue because a proposed order for his removal had been adopted by the Commission after he had been charged with political activity (pp. 91–92).